

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMES WIDTFELDT,)	CASE NO. 8:09CV88
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
NEBRASKA EQUAL OPPORTUNITY)	
COMMISSION, and NEBRASKA)	
AGRICULTURAL FARMWORKERS,)	
alias NAF MULTICULTURAL HUMAN)	
DEVELOPMENT CORPORATION,)	
)	
Defendants.)	

This matter is before the Court on the Report and Recommendation of Magistrate Judge F.A. Gossett (Filing No. 6) filed in response to the Nebraska Equal Opportunity Commission's ("NEOC") Motion to Remand (Filing No. 3). An "Objection to August 12, 2009, 'Report and Recommendation of Referee' as Being Contrary to the Law, Facts, and Evidence," as allowed by 28 U.S.C. § 636(b)(1) and NECivR 72.3(a), has been timely filed by James Widtfeldt. (Filing No. 7).¹

The Court has considered the NEOC's brief (Filing No. 4) and Widtfeldt's resistance (Filing No. 5) presented to the Magistrate Judge, as well as Widtfeldt's arguments made in support of his Objection (Filing No. 7).

With respect to the Plaintiff's Statement of Objection to the Magistrate Judge's Report and Recommendation, the Court has conducted a *de novo* review of the record pursuant to 28 U.S.C. § 636(b)(1) and NECivR 72.3. This Court has reviewed all the

¹Widtfeldt erroneously refers to the Magistrate Judge as a "referee."

After this decision is mailed, the application will be forwarded to Technology Center Art Unit 2131 for examination in due course.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Widtfeldt's statement of objections does not comply with the Local Rule, but rather consists of a laundry list of Amendments 1 through 10 of the Bill of Rights that he alleges were ignored by the Magistrate Judge but which seem wholly unrelated to the Report and Recommendation. (Filing No. 7).

The Court agrees with Judge Gossett's conclusion that "the federal district court does not have subject matter jurisdiction over any of the claims in Widtfeldt's complaint." (Filing No. 6, p. 5-6).

If the Court were to construe Filing No. 1 as a Notice of Removal, the Court would adopt the alternative recommendation of the Magistrate Judge and grant the NEOC's Motion for Remand and remand the case to Lancaster County District Court. As Judge Gossett noted, Widtfeldt did not comply with the provisions of the removal statute, 28 U.S.C. § 1446, which requires that the Notice of Removal be filed within 30 days after the receipt of the initial pleading, that written notice of the removal be given to all adverse parties, and that a copy of the notice be filed with the state court. Widtfeldt failed to show that a notice of removal was filed in the state court or that any attempt to remove the NEOC action to federal court was timely. Furthermore, the NEOC's state court action against Widtfeldt is one for breach of contract and this Court has no jurisdiction over the claims. The Court is further unable to identify any claims in Widtfeldt's Complaint (Filing No. 1) arising under the Constitution, treaties, or laws of the United States.

Because Judge Gossett fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation, in part. I conclude that Widtfeldt's Complaint lacks federal subject matter jurisdiction and that dismissal without prejudice to filing in state court is the proper course.

IT IS ORDERED:

1. The Defendant's Objection to the Report and Recommendation (Filing No. 7) is overruled;
2. The Magistrate Judge's Report and Recommendation (Filing No. 6) is adopted as follows:
 - a. James Widtfeldt's Complaint (Filing No. 1) is dismissed without prejudice; and
 - b. The Clerk of the Court is directed to amend the caption of the case and records of the Court to show (a) that Filing 1 is a civil complaint, (b) the plaintiff is James Widtfeldt, (c) the defendants are the Nebraska Equal Opportunity Commission and "Nebraska Agricultural Farmworkers, alias Multicultural Human Development Corporation," and (d) "James Widtfeldt Inc." is not a party to this case;
3. The Plaintiff's Motion to Remand (Filing No. 3) is denied as moot; and
4. Judgment will be entered in accordance with this Memorandum and Order.

DATED this 14th day of October, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge